

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

AMENDMENT OF PARTS 2 AND 90 OF THE)
COMMISSION'S RULES TO PROVIDE FOR THE)
USE OF 200 CHANNELS OUTSIDE THE)
DESIGNATED FILING AREAS IN THE)
896-901 MHz AND THE 935-940 MHz BANDS)
ALLOTTED TO THE SPECIALIZED MOBILE)
RADIO POOL)

IMPLEMENTATION OF SECTION 309(J))
OF THE COMMUNICATIONS ACT -)
COMPETITIVE BIDDING)

IMPLEMENTATION OF SECTIONS 3(N) AND 322)
OF THE COMMUNICATIONS ACT)

PR DOCKET No.: 89-553

PP DOCKET No. 93-253

GN DOCKET No. 93-252

To: The Commission

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REPLY COMMENTS

Pro Tec Mobile Communications, Inc. (Pro Tec), by its attorneys, respectfully submits its Reply Comments to the Commission's Second Further Notice of Proposed Rule Making in the above-captioned matter. In support of its position, Pro Tec shows the following:

In reviewing comments to the instant rule making, Pro Tec notes that many of the commenting parties have expressed the importance of protecting the operations of incumbent licensees and providing existing 900 MHz licensees with the opportunity to expand their systems, thereby reaping the benefit of each's substantial investment to date in providing service to the public on the subject frequencies. Indeed, many commenters

expressed the belief that such opportunity had been promised to them (either express or implied) when they became 900 MHz licensees. Many commenters question the need for, or wisdom of, auctions in areas where existing licensees already serve a major part of the MTA. Pro Tec agrees with those commenters and urges the Commission to continue forward with its proposals to protect incumbent licensees and the value of their constructed systems, to assure that those entities which have made a substantial investment do not suffer any dilution of that investment or any reduction in the business opportunities which might flow therefrom.

The Commission Should Establish an Auction Feasibility Test

In furtherance of this idea forwarded by the above referenced commenters and, in part, by the Commission, Pro Tec reiterates its three-prong auction feasibility test to determine if it is appropriate to auction certain frequencies in a given market. The application of this auction feasibility test would serve the public interest by permitting those designated entities, which have established their commitment to offering service in the 900 MHz band, to expand their existing systems. It would also prevent the Commission from wasting its scarce resources on an attempt to auction frequency blocks for which there is no realistic interest beyond that of the incumbent licensee's.

Pro Tec suggests that wide-area licenses be awarded to existing, designated entity licensees without the requirement of auction participation if those entities meet the following criteria:

- (1) The entity must be a small or women or minority-owned business as defined in the Commission's Notice of Proposed Rule Making.
- (2) The entity must have a fully constructed and operational 900 MHz system, operating on at least ten channels.
- (3) The existing system, employing a 55-mile service contour, must presently provide coverage to 25% or more of the population within the MTA.

Pro Tec cautions the Commission, in an echo of many of the commenters, that the 900 MHz auction could encourage less than scrupulous entities to bid on frequency blocks in MTAs without a real desire to provide service to the public. Toward that end, Pro Tec agrees that certain measures need to be taken to prevent incumbent licensees from falling victim to new entrant/speculators. However, Pro Tec cannot endorse the suggestion made by Nextel Communications, Inc. that the Commission require a greater upfront payment than that already proposed, *see*, Nextel comments at 2. Pro Tec avers that the proposed requirement of a greater upfront payment serves only the largest entities, while penalizing smaller, legitimate operators.

When making its suggestion, Nextel assumed that a greater upfront payment would discourage insincere bidders. Such is not necessarily the case. Indeed, the level of a participant's sincerity in bringing service to the marketplace cannot be judged simply by the amount of money one is willing to forego in a speculative activity.¹ Larger

¹ The Commission's records amply demonstrate that even large, publicly traded corporations are able to trade in "spectrum futures", with little intent or evidence of ever providing a viable service to the public on the radio spectrum acquired, whether by grant, auction or purchased in the free market.

companies may determine that their business strategies are best served by "bidding up" a competitor's target frequencies and/or market and will have greater resources to do so. Small businesses have less (or no) practical incentive to play the type of games Nextel envisions. Small businesses are more directly accountable for every expenditure made. Small businesses face disastrous consequences if forced to withdraw even a single bid.²

Increasing the upfront payment would only serve to limit the number of small businesses able to enter the competition; it would not serve to improve the quality of the competition. The Commission has previously determined that increasing the number of small business entrants into the 900 MHz SMR field is in the public interest; it should not now take steps to limit those entrants.

Rather, to discourage both blackmail and greenmail by new entrants, Pro Tec supports those commenters which stated that the Commission should not permit applicants unfettered access to auctions for all markets. Ram Mobile Data stated that a bidder should only be eligible to bid on blocks listed in its Form 175 and for which it had made an upfront payment, *see*, RMD comments at 7. Geotek stated that the Commission should require an upfront payment for each market for which an applicant designates an interest on its Form 175, *see*, Geotek comments at 5. Pro Tec agrees that a bidder should be required to specify all frequency blocks and markets in which it is

² In fact, the Commission may note that the use of greater upfront payments as a type of "insurance policy" insures only the Commission and not disappointed bidders who, under other circumstances, would have provided service to the public.

interested and should not be permitted to participate in auctions for those markets and frequencies which it has not previously specified its intent.

With the foregoing provisions in place, the Commission will be in a position to know, prior to auction, in which markets auctions are necessary and will conduct only those auctions necessary. This will save the Commission precious time and money as the 900 MHz auction will have been made as efficient as possible.

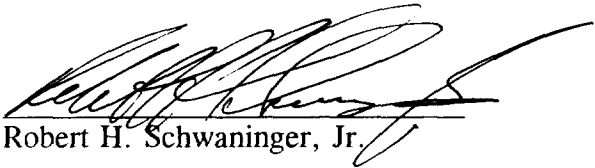
Pro Tec salutes the Commission's determination that the definition of small business, for the purposes of the 900 MHz auction, should be those entities or companies with less than \$3 million in gross revenues. Such a definition is a realistic observation of the existing 900 MHz marketplace. Pro Tec applauds the Commission for its \$3 million gross revenues limit as such a limit may permit Pro Tec to remain a competitor in the communications industry; an industry which is increasingly out of reach for new, sincere entrants.

Conclusion

Pro Tec Mobile Communications, Inc. respectfully requests that the Commission modify its adoption of the proposals contained in its Second Further Notice of Proposed Rule Making in view of the Comments contained herein.

Respectfully submitted,
PRO TEC MOBILE COMMUNICATIONS, INC.

By


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Dated: June 12, 1995

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CERTIFICATE OF SERVICE

I hereby certify that on this twelfth day of June, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

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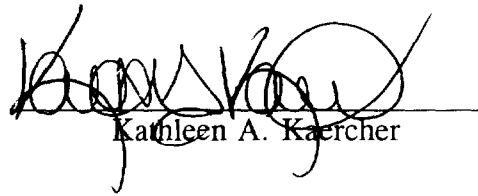
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